



DATE: May 21, 1990

TO: Gary King, Deputy Manager Land Div.

FROM: Terry G. Ayers, Manager FSMU *TGA*

SUBJECT: Sauget Sites Negotiations Status

CONFIDENTIAL

Background

In late 1989, CERCLA information requests and general notice letters were sent to over 25 PRP's involving 7 Sauget sites. Virtually all PRP's responded to the information requests as there are substantial penalties for non-response. The information gathered was used to increase our understanding of PRP involvement with the different sites and to send out notice letters to additional PRP's. The information requests and notice letters were part of an enforcement strategy meant to induce a sense of paranoia into a tightly knit industrial group.

Current Status

Our enforcement strategy has worked extremely well on the Sauget sites and has put us on the verge of a settlement which could reach national prominence. We now expect a settlement on Area II for three separate RI/FS's (for three different sites). In Area I we expect to get a proposal for 2 RI/FS's and a consent agreement for a Removal Action for Creek Segment A. The two remaining sites in Area I are still in dispute. I intend to threaten the use of state money for an RI/FS in these remaining areas to compel a complete settlement.

Removal Actions

On a parallel track, we have been negotiating with Cerro Copper to do a Removal Action in Creek Segment A. We have now agreed with Cerro on the final language for a consent agreement to do the Removal Action. Approximately 20,000 cubic yards of PCB contaminated sediments will be removed from Dead Creek starting in August of this year. The sediments will be directly loaded in railcars and sent out of state for disposal. A press release will be prepared and I am sure that intense media coverage will follow.

Monsanto has been advised by Cerro of their plans for Creek Segment A. In the spirit of industrial competition, Monsanto is now seriously planning to do a Removal Action on Creek Segment B. Monsanto has had difficulty in getting access for multiple property owners to do sampling Segment B. Monsanto has informally proposed that they enter into an agreement with IEPA for the Agency to do the sampling. Monsanto believes, as do I, that we would be able to obtain access easier. All of the IEPA's costs would be reimbursed by Monsanto and we would provide certain disclaimers on sampling results.

IEPA's Use of CERCLA Authorities

My intent from the beginning of negotiations has been to lodge all consent agreements in federal court pursuant to CERCLA. The states use of CERCLA authorities has been an evolving legal area ever since Colorado state won their case at the Rock Flats NPL site. It now appears that consent agreements for all, but one site (Sauget/Toxic) will be entered into federal court. As it is our stated intent to add the Sauget sites to the NPL, many PRP's realize that a federal court consent agreement will in large measure protect them from USEPA's customary intervention. I do have an agreement from USEPA to review RI/FS documents and to provide comments to IEPA.

Some of our past costs and all of our future oversight costs will be provided for in all consent agreements. As provided for in SARA, the lead Agency, IEPA, will select the remedy(s) for all seven sites. All removal actions and RI/FS's done pursuant to CERCLA will also be able to use the SARA exemption from obtaining any local, state or federal permits.

It is my intent to publicize these settlements in several national trade magazines to highlight the states use of CERCLA authorities. This would greatly further ASTSWMO's goal of getting Congress and USEPA to delegate large portions of the Superfund program to the State's during CERCLA re-authorization next year.

IEPA Oversight

As you may realize, the magnitude of these settlements will require intense oversight by IEPA of all PRP RI/FS work products. This PRP group is sophisticated, knowledgeable and well financed. Those sections and divisions which support RPMS already appear to be strained. It has already been suggested to me that we reduce our oversight effort. Less than a total Agency commitment to this project will result in a very satisfied group of PRP's.

TGA:pss

cc: Jim Janssen
Bill Child
Roger Kanerva
Bernie Killian
Paul Takacs